

Castle Questions the U.S. Securities & Exchange Commission's Enforcement of Questionable Stock Option Practices -- March 1, 2007

Washington, D.C. -- Long concerned about the manipulation of stock options and their impact on the average investor, Delaware Congressman Mike Castle, a senior Member of the House Financial Services Committee, today wrote to Securities and Exchange Commission Chairman Christopher Cox questioning enforcement practices with respect to "back-dating", "spring-loading", and "bullet-dodging".

The text of the letter is below

March 1, 2007

The Honorable Christopher Cox

Chairman

U.S. Securities and Exchange Commission

100 F Street, NE

Washington, DC 20549

Dear Chairman Cox:

We are writing to inquire about the manipulation of stock options. While we understand that the backdating of stock options has significantly decreased with the passage of the Sarbanes-Oxley Act of 2002, we are concerned that certain manipulation still persists.

Specifically, we are concerned with the manipulation of the timing of stock options grants sometimes referred to as "spring-loading" and "bullet-dodging", in which companies award options before positive or after negative corporate news. If the shareholders are unaware of this inside information, shouldn't these practices be considered a violation of insider trading rules? Should grants be restricted prior to corporate news or should such information also be disclosed to the shareholders in order to prevent this type of disadvantage?

We understand that on July 26, 2006, the Commission announced new rules on executive compensation that included new disclosure requirements about the timing and pricing of options. However, how does the Commission ensure that companies do not engage in spring-loading and disclose options granted at the market value?

We have also learned that to this date, only a dozen enforcement actions have been brought by the Commission in the last few years for the late submissions of required executive option grant disclosures. We are concerned that the Commission's lack of enforcement in this area may predispose companies to options manipulation such as backdating.

When you testified before the Senate Banking Committee on the backdating of stock options in September of 2006, you discussed that in terms of monitoring filed grants, additional resources from Congress would be "put to good use". How would the Commission use additional funding? Is the Commission effectively enforcing the new rules regarding disclosure requirements and continually monitoring the filing of stock options to ensure grants are being filed in a timely, accurate and ethical manner?

Manipulation diminishes investor confidence in our capital markets. We look forward to your response on this important issue.

Sincerely,

Michael N. Castle

Member of Congress

cc. The Honorable Spencer Bachus, Ranking Member

The Honorable Barney Frank, Chairman

The practices mentioned in the letter can be described as follows:

Backdating

- Offering options that are valued at an earlier date, when the stock was lower, to maximize potential gains, when the stock was lower to maximize potential.
- Example: In July 2006, two former senior executives at Brocade Communications Systems were indicted for actions involving back-dating of stock options to attract and retain high-level employees.

Spring-loading

- Timing the granting of options immediately before good news, in expectation of a surge in share price.
- Example: In 1997, one day before announcing a major deal with Microsoft, Apple granted over 800,000 options to several top executives. The stock quickly soared.

Bullet-dodging

- Timing the granting of options immediately after bad news, in anticipation of a rally in the share price after an initial decline.
- There are no clear examples, experts say, as bullet-dodging is exceedingly difficult to prove.